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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/03/2001

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/743,577

Applicant(s)

SCHLACHTER, HERBERT

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2001.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☒ Claim(s) 7, 13 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-16 are included in the prosecution of this application.

Preliminary Amendments are acknowledged.

### ***Claim Objections***

Claims 7 and 13 are objected to because of the following informalities: in claim 7 the word "adstringent" and in claim 13 the word "topic" contain typographical errors. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1, 5, 6, 13-16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

The recitation of "at least one trace element" in claim 5 is unclear because claims 1-3 require a metal salt or minerals, thus it is unclear what is the difference between trace elements and minerals are.

The recitation of "at least one liposome" is indefinite since it is unclear how a topical composition can contain only one liposome.

Claims 1 and 13-16 provide for the use of a preparation, but, since the claim does not set forth any steps involved in the method/process, it is unclear what

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method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1 and 13-16 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Abad (5538740).**

Abad discloses a therapeutic and cosmetic composition containing calcium carbonate, zinc oxide, polyethylene glycol, and amino acids (Note Examples).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2, 5-7, 9-11, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abad cited above, in combination with Pickart (5554375).**

As set forth above, Abad teaches a therapeutic and cosmetic composition for dermatitis, rashes, burns, wrinkles, and regeneration of the skin (col. 4, lines 45-60 and col. 8, lines 40-49) containing amino acids, metals, zinc peroxide, polyethylene glycol (humectant). Abad teaches optional ingredients such as Vitamin C and glycerin (col. 8, 5-15). Abad teaches the proportions of the ingredients in the composition (col. 7, lines 1-25).

Abad does not teach the use of a plant substance in the composition and the use of liposomes.

Pickart teaches tissue protective and regenerative compositions containing amino acids (Glycine, L-Histidine, L-Lysine), metal salts (copper, zinc), and aloe vera as a non-toxic carrier (Note Ex. V). Pickart teaches the use of the composition for protecting the skin from oxidation, accelerating healing of wounds, burns, and irritation (col. 4, lines 27-35). Pickart suggests the composition in various forms such as liposomes (col. 6, lines 35-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Abad and Pickart since both teach a composition containing metal salts and amino acids for therapeutic use. One would be

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motivated to so since Pickart teaches the use of aloe vera which not only can be used as a carrier but is used in the art for burns and irritations.

**Claims 3, 4, and 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abad cited above, in combination with Pickart cited above, in view of Horrobin et al (5145686).**

As set forth above, Abad and Pickart teach therapeutic compositions containing amino acids, metal salts, and zinc oxide. Abad teaches the use of paraffin, mineral oil, or lanolin in the composition (Note Examples).

The references do not teach the use of fatty acids from a vegetable source.

Horrobin et al teach a topical pharmaceutical composition containing vegetable oils. The reference teaches linoleic acid from vegetable sources has anti-inflammatory properties (col. 2, lines 30) and can be used to treat skin disorders such as burn and wounds (col. 4, lines 13-24). Further, Horrobin et al teach the use of zinc or zinc salts for the bioconversion of linoleic acid and its own healing properties (col. 5, lines 3-14). Horrobin et al suggest the use of lysine in the composition (col. 3, lines 56-60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Abad, Pickart, and Horrobin et al since the references teach topical compositions for the treatment of skin irritations and burns. One would be motivated to use fatty acids from a vegetable source since Horrobin et al teach that vegetable sources contain linoleic acid, which has anti-inflammatory properties.

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**Claims 6, 8, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abad cited above, in combination with Pickart cited above, in view of Gross et al (5643601), in further view of Galley et al (5607681).**

As set forth above, Abad and Pickart teach therapeutic compositions for the treatment of skin disorders.

The references do not teach the use of liposomes as carriers or peroxides.

Gross et al teach skin preparations in liposomes. Gross et al teach the use of liposomes to penetrate the horny layers, fix to weakened sites of the epidermis and improve the interstitial cell structure. Further, the reference teaches the use of peroxides to improve the supply of oxygen to the skin. (Note col.1, lines 10-35)

Galley et al teach the use of peroxides such as magnesium peroxide or hydrogen peroxide for their anti-microbial properties (col. 1, lines 10-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a liposome as the carrier for Abad or Pickart's therapeutic composition. One would be motivated to do so since Gross et al teaches the advantages of using liposomes.

Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use peroxides in Abad's or Pickart's therapeutic compositions. One would be motivated to do so since peroxides as taught by Gross et al and Galley et al not only improve the condition of the skin by increasing the supply of oxygen to the skin but have anti-microbial properties to fight skin irritations caused by bacteria such as acne.

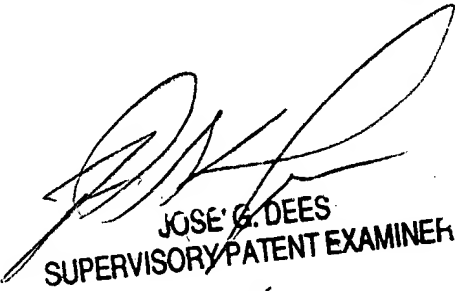
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Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.

SSG

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER  
1/6/16